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06-CV-00175-ORD

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EPHRAIM R. SMITH,

Petitioner,

No. C06-175P

v.

DOUG WADDINGTON,

Respondent.

ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on Petitioner's Notice of Appeal. (Dkt. No. 21). The day after he filed his Notice of Appeal, Mr. Smith made a docket notation labeled "Motion for Certificate of Appcalability (See Notice of Appeal)." The Court therefore construes Mr. Smith's Notice of Appcal as a Motion for Certificate of Appealability. Having considered Mr. Smith's motion and Defendant's response (Dkt. No. 23), the Court DENIES the motion for a certificate of appealability.

Under 28 U.S.C. § 2253(c) a petitioner may not appeal the denial of a habeas corpus petition unless the district court or a circuit court issues a certificate of appealability. The Court may only issuc a certificate of appealability "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this requirement, the petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 & n.4 (1983)).

In a case like this one, where the claims were dismissed on procedural grounds, a certificate of appealability “should issue when the [petitioner] shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* But “[w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.*

8 Mr. Smith has made no showing in support of his motion for a certificate of appealability.
9 He has not made a substantial showing of a denial of a constitutional right or that the decision of the
10 Court dismissing his federal habeas petition as time-barred is debatable or wrong. Because Mr.
11 Smith has offered no argument in support of his motion for a certificate of appealability, the Court
12 DENIES the motion.

13 The Clerk is directed to send copies of this order to all counsel of record.

14 Dated this 4 day of December, 2006.

Wander Peck

Marsha J. Pechman
United States District Judge